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10/541,439

10/06/2005

Jes Olsen

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EXAMINER

LE, HUYEN D

ART UNIT

PAPER NUMBER

2614

MAIL DATE

DELIVERY MODE

06/12/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|-----------------------------------|--|
| Office Action Summary | Application No. 10/541,439 | Applicant(s) OLSEN, JES | |
| | Examiner HUYEN D. LE | Art Unit 2614 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07/05/05</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: on pages 2 and 3, “claims 2-4”, “claim 5”, “claims 6-8”, “claim 9”, “claims 10-12” and “claim 13” in the specification should be deleted since these claims could be changed or renumbered during prosecution. Further, on page 3, line 6, “the UCL”, “the MCL” and “the MCR” need a full description.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear what the UCL, the MCL or the MCR in claim 5 are referred to.

Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: the reference numbers 1, 2, 3, 4 and 5 in figure 1 are not mentioned in the description. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement

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drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 16-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 16-21 are claiming “a fitting software for a computer”, there is no claim language indicating that the software is implemented physically.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 6, 11, 16, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaiser et al. (US 5,835,611).

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Regarding claim 1, Kaiser et al. teaches a method for providing improvement to a hearing aid fitting situation where the method comprises simultaneously visualizing an output of the hearing aid based on a calculated or measured input to the microphone and a calculated or measured hearing threshold of the patient (col. 2, lines 30-61, col. 3, lines 1-34, see figures 2 and 4 and the text).

Regarding claims 6, 11 and 16, Kaiser teaches a hearing aid fitting device comprising a hearing aid (4), wherein the hearing aid (4) is adapted for being connected with the hardware (1, 2, 7, 8, figure 1), wherein the hardware comprises a screen (7) for displaying of data in connection with the fitting, and wherein on the screen a display of the hearing threshold as a function of a frequency is provided, wherein the fitting device upon receiving data from a hearing aid data relating to the actual input to the hearing aid is adapted for providing a display simultaneously of these data relating to the actual input directly or in a processed form in the same display as the hearing threshold as claimed (figures 2 and 4 and the text, also see col. 2, lines 30-61 and col. 3, lines 1-34).

Regarding claim 20, Kaiser teaches the basic values of a hearing aid setting or the fitting hardware being stored on a storage medium in a computer as claimed (col. 4, lines 51- 67 through col. 5, lines 1-4).

Regarding claim 21, Kaiser teaches the system having the characteristics that are displayed as claimed (figures 2, 4, col. 4, lines 27-56 and col. 5, lines 8-13 and lines 31-56).

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Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 2-5, 7-10, 12-15 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaiser (US 5,835,611).

Regarding claims 2, 3, 7, 8, 12, 13, 17 and 18, Kaiser does not specifically teach two displays as claimed. However, it would have been obvious to one skilled in the art to provide more displays for the system of Kaiser such as providing two displays for displaying of information to a patient and to hearing professional or providing a second screen to the patient for displaying a selected information to the second screen for better fitting and modifying the transmission characteristic of a hearing aid to a hearing impairment of a wearer.

Regarding claims 4, 9, 14 and 19, Kaiser does not specifically teach the display update rate as claimed. However, it would have been obvious to one skilled in the art to provide any

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range for the display update rate or screen update rate such as the display update rate less than 1 second or the screen update rate that is more than 0.1 second and less than 0.4 second for better fitting and depending on the desired time of the patient and the hearing professional.

Regarding claims 5, 10 and 15, Kaiser teaches the system having the characteristics that are displayed as claimed (figures 2, 4, col. 4, lines 27-56 and col. 5, lines 8-13 and lines 31-56).

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Davis et al. (US 6,201,875) teaches a hearing aid fitting system.

Ludi (US 7,054,449) teaches method for adjusting a transmission characteristic of an electronic circuit in a hearing aid.

Yanz (US 7,366,307) teaches a graphical interface that is provided to select parameters for fitting a hearing device.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CURTIS KUNTZ can be reached on (571) 272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HUYEN D. LE/
Primary Examiner, Art Unit 2614

HL
June 11, 2009